

UTAH CAPITAL INVESTMENT BOARD MEETING
Friday, January 13, 2004
Minutes

Members Present:	Ed Alter, David Harmer, Sterling Jenson, Robert Majka
Members Absent:	David Hemingway
Visitors:	Jerry Jensen
Staff:	Jeff Gochmour, Mark Renda, Rod Linton, Jeremy Neilson, Tamee Roberts

I. WELCOME

The meeting was called to order at 3:15 pm on Friday, January 16, 2004. Board Chair, David Harmer, welcomed everyone. David asked Jeremy Neilson to introduce himself. Jeremy was hired in December as Fund of Funds analyst to work with the Board.

II. DISCUSSION ITEMS

A. Discussion of Board responsibilities

Jerry Jensen reviewed the Board responsibilities as outlined in the statute. Title 9 section 2 subsection 1902 findings and purpose explains why the Legislation approved this legislation and then defines terms in the statute. In sections 1902-1904 it explains the Utah Capital Investment Board purposes and definitions. Three members constitute a quorum. A per diem is offered. Qualifications for Board members are defined. The Board members share in governmental immunity. Meetings of the Board are to be public and open and reasons for closing a meeting exist. Section 1906 defines Board's duties and powers or responsibilities. This Board is not just an advisory Board, it is a policy making Board. Jerry reviewed the powers and duties of the Board as defined by statute. He reviewed the Boards criteria and procedures for redeeming certificates. Jerry reminded the Board of the Annual report due to the legislature. Jerry supplied the members with the entire act in hard copy (please see attached). The general policies and expectations of Boards and commissions booklet was also supplied to the Board.

Regarding compensation Tamee Roberts supplied the Board members with forms for a per diem. The Board members will contact her individually concerning their preference- to accept the per diem or not.

B. Tax Credit Process

- a. **Designated purchasers** and the tax commission- David Harmer explained that investors are induced to invest by the Utah tax credit. Some potential investors (perhaps out of state) may not be able to use the tax credit and would decide to sell them. Because the tax credit market is so small the credits may have to be sold at a discount which would be undesirable. Therefore the statute contemplated the creation of a pool of designated purchasers-- key consistent tax payers like banks or utilities. The identity of particular corporate entities paying the most taxes is not public information but the Board members and staff members through networking may be able to gather a good list of the top payers to solicit. These designated purchasers would allow the Board to monetize the tax credits. Essentially allowing the business to pay its tax obligation to the UCIB and in turn receive a tax certificate from the UCIB in lieu of payment to the state tax commission. David Harmer has met with one of David Hemingway's tax experts to outline a way to make the process as painless as possible to encourage the business to monetize the tax credits as a public service with out a fee. The tax expert recommended that the process not be called a tax credit but something like alternative certificate payment so they would not lose the ability to deduct state taxes on the federal tax payments. A letter has been drafted to send to Lynn Solarczyk, a tax commission legal adviser, to determine whether the commission can, by rule, designate the tax credits as payment in lieu of tax or if they think more legislation is necessary. Another issue is the problem of pre-committing how many certificates a business would take. A businesses tax obligation is not constant or flat. If the UCIB tried to demand at any given time that the company pay their tax obligation to UCIB in order to monetize the tax credits then it cannot be assured that a large, or any, tax obligation would be available from the

company. In addition David Harmer explained that the UCIB may need diversity in the investor pool because the tax credits needs of businesses fluctuates. Mark Renda explained that tying the tax credit to the investor may limit the amount businesses invest because their tax payments are not as high as they may be able to invest and the businesses would not invest more than their tax needs.

Mark Renda explained that part of the discussion should define what the product types are and who the targets will be. The goals in thinking through this are how to preserve some of the upside potential to the state. The UCIB should be able to morph the investment product. Out of state or pension fund investors may be targeted. The UCIB should be careful not to cannibalize current capital investment in the state. If current venture capital investors are lured to the UCIB product and away from other venture capital firms in Utah then the Board has done no public good. Not diluting the tax credit at a discount is an important issue.

Ed Alter mentioned that in involving the ILCs in Utah the Board hopes there may be Community Reinvestment Act implications. However he would not want to cannibalize what the ILCs may already be investing in the community. The Board may not want to target the banks for monetizing the tax credits because the banks may be needed on the investing side of the program structure.

Sterling Jenson was asked to help the Board contact other tax experts in his company to organize a straw-man structure of how this would work and then target potential investors. When staff asked the Oklahoma state administrators of a similar program how they started, they explained that they began with a very small pool of designated purchasers and over a 15 year period the pool has grown. Oklahoma started with the utilities and there was sufficient interest there to start the fund. The Staff listed Questar, PacifiCorp, Utah Power and Light, AT&T, Comcast, as a suggested Utah starting point. Additionally, with some wealthy individuals in the state that might be interested in assisting or receiving tax credits, like Sorenson and Huntsman then the pool of designated purchasers will have a good start. The Board discussed that working individuals, like partners of LLP's, may actually be easier targets for designated purchaser pool than large corporations.

Mark Renda was asked to find what the total of corporate income tax is and then to locate the companies that are paying the majority of those taxes.

C. Establishment of Utah Capital Investment Corporation

- a. **Articles of incorporation and federal tax status**—Jeremy Neilson explained that the Utah Capital Investment Corporation (UCIC) needs to establish its Articles of Incorporation, file them, seat a Board and set up by-laws. The first need is to decide what kind of entity the corporation will be. Jeremy has worked with Ballard Spahr law firm on drafting the Articles and stated that the Board of the UCIC will need to decide on the tax structure as one of 3 chosen 501(c) designations. Jeremy presented research to the Board regarding his top choices for the designation. The IRS may change the designation regardless of what is chosen. Counsel for UCIC is needed. An RFP may need to be generated to select counsel for the corporation or the Attorney Generals office may select counsel for the corporation. The Board expressed a desire to closely coordinate agendas and goals with the soon to be organized board of the corporation.

D. Status of the Utah Capital Investment Corporation Board

- a. Jeff Gochmour explained the progress of the Utah Capital Investment Board selection. The DBED committee assigned to select these individuals. This committee has met and identified 6 candidates but only talked to four of them informally. The six were named with bios.

E. Investment Incentive options

- a. David Harmer introduced the different possible structures for the corporation. It is best to first identify the targets for the corporation and then choose the structure that appeals the most to those targets. It may be a good idea to have more than one structure but not too many. Rod Linton mentioned a disadvantage of having more than one structure. David Harmer discussed the consequences of limiting the diversification which could limit the venture firms the

corporation could invest in. David presented some possible structures as outline in the fold out scenarios sheet. One extreme limits the number of venture capital firms the corporation can invest in and the other extreme limits the amount of upside potential the corporation can recapture but opens the possibilities of more firms. So by deciding who to target as investors, the Board can better understand how to structure the corporation. If the product offered by the corporation can merit CRA credit the structure will be very attractive to ILCs. Jeremy noted that ILCs have lending, investing and service obligations. If the corporation attracts funds from their investing obligations, it may cannibalize on their current investment in the community. By giving money to the UCIC the ILC will fulfill their CRA obligation and will not invest in the community doing no public good. David Harmer explained that from conversations with CRA representatives from ILCs that commitments the ILCs had already made were not being drawn. Bob Majka mentioned that perhaps ILC CRA dollars are not all going to venture capital. Discussion followed mentioning that ILC CRA dollars are going to later stage development. Jeremy is working to find a structure for a strategic plan by working with some CRA Officers at a few of the large ILC's. The Board can then take the strategic plan to the FDIC regulators and get their approval, after which and investing will flow. If it is not approved the structure can be adjusted from their feedback. There are 5 strategic plan banks in Utah. Bob Majka said the three important players are Merrill Lynch, UBS, and American Express. Jeremy mentioned that Universal is also a large player. Meetings with these organizations to get feedback are important. The Board members were invited to participate in the meetings Jeremy will set up with these banks. Bob suggested first meeting with Ed Leary from Utah's Department of Financial Institutions first, develop a vehicle they feel would work and then contact the banks with a structure. Jeremy wanted a decision on a structure between a fixed income or a venture income vehicle. David Harmer wanted feedback from the banks as to a starting place. Rod Linton mentioned approaching the Pension plans and selling the product not as a venture capital investment, but a fixed instrument in order to avoid gatekeepers. Two of the seven board members at the Utah Pension fund are going to be involved with helping the UCIB. Ed Later will contact Bruce Cundick and asked that Mark get a meeting together. Bob will get with Jeremy to meet with ILCs.

F. Discussion of Fund of Funds Manager

- a. David Harmer addressed whether there was an actual need for a Fund of funds manager. Mr. Harmer feels it may not be necessary. This may be a discussion for the Board of the Corporation. David suggested tabling the discussion and will engage the Board of the corporation on this issue.

G. Discussion of Critical Path for Success

- a. The industry is energized and anticipating a critical path for the program. David suggested listing what needs to be done before July 1, 2004.
- b. The legislative steering committee should be satisfied regarding the status of the program. They will ask for a time line.

H. Constitutional Issues

- a. David explained that Jerry Oldroyd will set up a meeting with the Attorney General Mark Shurtleff to discuss the pros and cons of constitutional issues.

I. Schedule of Meeting for 2004

- a. The third Friday of each month was decided upon for the meetings. The next meeting will be February 20, 2004.

IV. ADJOURNMENT

With no further business, the meeting adjourned at 5:00 pm.